

September 8, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Development and Environmental Services File No. **L99TY401**
Proposed Ordinance No. **2000-0460**

SKYWAY DELI AND GAS STATION
Rezone Application

Location: Northwest corner of the intersection of Renton Avenue South
and 76th Avenue South in Skyway

Applicant: Raiz Qureshi, *represented by* **Al Johnston**
P. O. Box 1899
Yelm, WA 98597
Telephone: (360) 488-4600

Department: Department of Development and Environmental Services
Land Use Services Division, *represented by*
Karen Scharer, Current Planning Section
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7114
Facsimile: (206) 296-7051

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions
Examiner's Decision:	Approve, subject to conditions

PRELIMINARY MATTERS:

Application or petition submitted:	June 10, 1999
Complete application:	June 10, 1999

EXAMINER PROCEEDINGS:

Hearing Opened:	September 5, 2000
Hearing Closed:	September 5, 2000

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Rezone
 - changed circumstances
 - overlay districts
 - P-suffix conditions

SUMMARY:

Approval of the reclassification is recommended, subject to conditions.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information:**

Proponent:	Al Johnston PO Box 1899 Yelm, WA 98597 Telephone: (360) 458-4600
Location:	At the northwest corner of the intersection of Renton Avenue South and 76 th Avenue South
STR:	12-23-04
Parcel:	023100 0040
Zoning:	CB-SO
Community Plan:	West Hill

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the September 5, 2000 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.

3. Al Johnston has submitted an application on behalf of Raiz Qureshi to reclassify an urban commercial lot of more than 16,000 square feet from CB-SO (Community Business with Special District Overlay) to CB (Community Business without the Overlay). The effect of the reclassification would be to allow redevelopment of the property with a gas station, drive-through car wash and a delicatessen. The property is a triangular parcel that lies northwest of the intersection of Renton Avenue South and 76th Avenue South. The property served as a gasoline station until about 1980, at which time it was converted to food-related uses. At various times these have included fresh produce markets, fruit stands and fast food restaurants. The current tenant is in the process of preparing to open a chicken and wings restaurant to go along with the existing fruit stand.
4. In 1994 pursuant to adoption to the West Hill Community Plan, a special district overlay was created for the Skyway business district to encourage pedestrian-oriented commercial development. This overlay contains a number of provisions designed to encourage pedestrian-oriented retail development, including setback reductions and the exclusion of uses that encourage automotive traffic. Thus, the pedestrian SDO excludes gas stations, car washes and drive-through retail and service uses. By removing the overlay condition the property owner would be able to develop a gas station and car wash consistent with the underlying Community Business zoning.
5. The subject property lies at the south end of the Skyway Center business district and possesses unique characteristics that differentiate it from other properties in the overlay district. First, Renton Avenue South, a minor arterial, intersects 76th Avenue South, a neighborhood collector, at the south end of the parcel at an acute angle that results in a triangular parcel. Further, more than two-thirds of the linear property boundary for the parcel is encumbered by road frontage. Moreover, 76th Avenue South at this location also serves commercial and institutional uses, with a bank lying to the east of the Applicant's site and a regional library and a post office lying to the northeast. Traffic approaching these destinations from the south all use 76th Avenue South adjacent to the site. A consequence of the parcel's location is that uses on the Applicant's site are inevitably impacted by adjacent traffic volumes on both sides, thus undermining the kind of protected environment conducive to development of pedestrian-oriented business.
6. This rezone application is subject to the changed circumstances requirement stated at KCC 20.24.190.D. The application failed to address this requirement specifically, and in reality few facts offer themselves in support of a changed circumstances finding. What has changed essentially is that the community has recognized that the pedestrian overlay district is not going to provide an instantaneous boost to the redevelopment of the Skyway business district. Within the southern node of the district very little has changed since 1994. No major renovations have taken place, no pedestrian-friendly development has occurred, business turnover remains high and the commercial vacancy rate is substantial.
7. As noted by the staff report, what has changed since 1994 is primarily that the West Hill Community Council supports the Applicant's rezone despite the fact that its automobile-dependent thrust runs counter to the pedestrian overlay. This appears to be a recognition that within the southern node of the Skyway Center district encouraging viable commercial development of any kind is a more important goal than quibbling over the type of business. The Community Council support also presumably reflects a recognition that the Applicant's property, located at the south end of the business district on a triangle between two busy streets, is ill-

for pedestrian-friendly development. The support of the Community Council can be regarded as a change of circumstances in the context of both its important role in formulating the West Hill Community Plan and its recognition within Plan Policies WH-27 and 28 as an institution to be consulted in the development review process.

8. The rezone application has been opposed by Eduardo Nezbeth, who as the current tenant of the Applicant's property is converting the old gas station building into a chicken and wings restaurant. Mr. Nezbeth has asserted his intention to purchase the property and to pursue the restaurant use. He correctly points out that his restaurant use is more consistent with the purpose of the pedestrian overlay district than the car wash and gas station proposal, and he further questions whether a rezone at this location would set a precedent for an influx of more gas stations into this neighborhood.
9. Finally, the Applicant, while seeking permission to develop uses at odds with the pedestrian overlay regulations, nonetheless has expressed through his consultant Mr. Johnston a desire to preserve the setback reductions authorized by the overlay district. In particular, Mr. Johnston would like to see a rezone approval that maintains the possibility of a zero setback for structures along 76th Avenue South.

As pointed by DDES staff, once the overlay district is repealed for this property, the normal zoning development standards automatically come into effect. There is nothing within the Zoning Code that authorizes the piecemeal amendment of overlay districts. If the overlay district is eliminated from this property, it must be repealed in its entirety. Moreover, while site-specific P-suffix conditions may be and are proposed for this property, KCC 21A.38.030.D prohibits the use of site-specific P-suffix conditions to reduce minimum Zoning Code standards or requirements. Thus, if the Applicant wishes to reduce Code setback requirements for this parcel, the appropriate mechanism is to file a variance application seeking such modification.

CONCLUSIONS:

1. Since the last area zoning for West Hill, conditions and circumstances affecting the subject property have undergone substantial and material changes not anticipated or contemplated within such previous zoning review. Due to its shape and location, these changed circumstances affect this property in a manner and degree different from other properties in the vicinity. Since reclassification of this property will be subject to a pre-effective condition requiring a site building permit for the proposed new uses, approval of the reclassification will not prejudice a contemporaneous sale of the property to a third party. Its development for restaurant use under the provisions of the pedestrian overlay district remains viable until the terms of the pre-effective condition have been satisfied.
2. The public necessity, convenience and general welfare will be served by the proposed reclassification.
3. The conditions of approval recommended herein, including dedications and easements, will provide public improvements necessary to serve the reclassified property; are required to make the reclassified property reasonably compatible with the environment; and will carry out

applicable state laws and regulations and the laws, policies and objectives of King County.

RECOMMENDATION:

Approve reclassification of the subject property to CB-P in lieu of CB-SO, subject to the following conditions:

Pre-effective Condition:

A building permit for development of the site must be submitted within two years of Council action approving this request. Failure to file an application meeting the filing requirements for a building permit to develop the site shall cause this action to be null and void. Note that DDES recognizes that at the date of application, the zone of the site will be CB-SO and will only be amended to CB-P after submittal for building permit. Compliance with the zoning classification will be waived for purposes of filing and vesting an application for building permit provided the uses and structures proposed comply with the P-Suffix Conditions of this approval.

Post-effective Conditions:

The following site specific P-Suffix Conditions to implement the West Hill/Skyway Policies shall be used to limit development of the site:

- A. Permitted uses shall be those uses permitted in the underlying zone, excluding the following:
 - 1. Motor vehicle, boat and mobile home dealer;
 - 2. Retail and service uses with outside storage, e.g. lumber yards, miscellaneous equipment rental or machinery sales;
 - 3. Wholesale uses;
 - 4. Recreation/cultural uses as set forth in KCC 21A.08.040, except parks, sports clubs, theaters, libraries and museums;
 - 5. SIC Major Group 75 (Automotive repair, services and parking) except 7521 (automobile parking; but excluding tow-in parking lots);
 - 6. SIC Major Group 76 (Miscellaneous repair services), except 7631 (Watch, clock and jewelry repair);
 - 7. SIC Major Group 78 (Motion pictures); except 7832 (theater) and 7841 (video tape rental);
 - 8. SIC Major Group 80 (Health services); except offices and outpatient clinics (801-804);
 - 9. SIC Industry Group 421 (Trucking and courier services);
 - 10. Public agency archives;
 - 11. Self-service storage;
 - 12. Manufacturing land uses as set forth in KCC 21A.08.080, except 2759 (Commercial printing); and
 - 13. Resource land uses as set forth in KCC 21A.08.090.
- B. The following development standards shall apply to uses located on site:
 - 1. Every use shall be subject to pedestrian-oriented use limitations and street façade

development standards (e.g. placement and orientation of buildings with respect to streets and sidewalks, arcades or marquees) identified and adopted through an applicable community, subarea or neighborhood plan, or the area zoning process;

2. For properties that have frontage on pedestrian street(s) or routes as designated in an applicable plan or area zoning process, the following conditions shall apply;
 - a. main building entrances shall be oriented to the pedestrian street;
 - b. at the ground floor (at grade), buildings shall be located no more than 10 feet from the property line next to one of the abutting streets;
 - c. building facades of ground floor retail, general business service, and professional office land uses that front onto a pedestrian street or route shall include windows and overhead protection;
 - d. building facades along a pedestrian street or route, that are without ornamentation or are comprised of uninterrupted glass curtain walls or mirrored glass are not permitted; and
3. Frontage improvements (curb, gutter, sidewalk, possible roadway widening) will be required along both Renton Avenue South and 76th Avenue South. The face of the curb along Renton Avenue South should be placed at approximately 27 feet from the roadway centerline while the face of curb along 76th Avenue South should be placed at approximately 18 feet from centerline. Sidewalks shall range from ten to twelve feet wide including sidewalk landscaping and other amenities. The sidewalk widths exceeding the amount required in the King County Road Standards may occur on private property adjoining the public street right-of-way. Exact design of the frontage improvements will be done during the building permit approval process.
4. A detailed topographic survey must be submitted as part of the building permit application clarifying the location of existing features.

ORDERED this 8th day of September, 2000.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 8th day of September, 2000, to the following parties and interested persons:

Mark Fitzgerald
Fire District #20
12424 - 76th Avenue South
Seattle WA 98178

Al Johnston
P. O. Box 1899
Yelm WA 98597

Nelson Enterprises
Dennis Goldstein & Associates
1402 - Third Avenue #1410
Seattle WA 98101

Eduardo Nezbeth

Riaz Qureshi

Robert E. Vann

19732 - 34th Ave S.
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Current Planning
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MS OAK-DE-0100

Karen Scharer
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MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) *on or before September 22, 2000*. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before September 29, 2000*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition

Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter.

**MINUTES OF THE SEPTEMBER 5, 2000 PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99TY401 – SKYWAY DELI &
GAS:**

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Karen Scharer, Al Johnston, Raiz Qureshi and Eduardo Nezbeth.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Preliminary staff report to the Hearing Examiner, mailed August 21, 2000
- Exhibit No. 2 Rezone Application L99TY401, received June 10, 1999
- Exhibit No. 3 Environmental Checklist, dated April 14, 1999
- Exhibit No. 4 SEPA TD, issued July 25, 2000
- Exhibit No. 5 Notice of Applications, mailed July 14, 1999
- Exhibit No. 6 Affidavit of Posting for Notice of Applications, posting July 23, 1999
- Exhibit No. 7 Notice of SEPA TD, Recommendation & Hearing, mailed July 25, 2000
- Exhibit No. 8 Revised Development Map, received June 5, 2000
- Exhibit No. 9 Assessor Map STR SE 12-23-4, and Assessor Map STR SW 12-23-4
- Exhibit No. 10 Traffic Analysis by Mark Jacobs, dated May 23, 2000
- Exhibit No. 11 Letter from the West Hill Community Council, dated April 15, 2000
- Exhibit No. 12 Applicable codes for reference

The following exhibits were entered by reference only (no number assigned) and are part of the working documents of DDES:

- ☐ West Hill Community Plan
- ☐ West Hill Community Plan map